IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

AS.No. 421 of 2002()

OS.738/1995 of II ADDL.SUB COURT,TRIVANDRUM
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APPELLANT: PLAINTIFF:

G.ASOKAN, CONTRACTOR, AGED 44 YEARS,
PUTHU VEEDU, T.C.8/304, ANAYARA AND NOW
RESIDING AT ASOK VALLEY VIEW, T.C.77/626
AKSHARA VEEDHI, PETTAH VILLAGE,THIRUVANANTHAPURAM.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENTS: DEFENDANTS:
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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, K.S.E. BOARD OFFICE,
VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

2. EXECUTIVE ENGINEER,
T.C.DIVISION, KERALA STATE ELECTRICITY BOARD,
CHACKAI, THIRUVANANTHAPURAM.

BY ADV. SRI.C.C.THOMAS, SC, K.S.E.B
SRI.PULIKOOL ABUBACKER, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS APPEAL SUIT HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 421 OF 2002

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Dated this the 20th day of November, 2007

J U D G M E N T

Plaintiff in O.S. No.738 of 1995 on the file of the Second Additional Sub Court, Thiruvananthapuram, is the appellant. Plaintiff filed the suit for money. According to the plaintiff he entered into an agreement with the second defendant on 30.9.1992 for the construction of 220 KV Substation, Pothencode Block, tapping the surface of the approach road. He deposited an amount of Rs.2,100/- as security. According to the plaintiff he supplied materials to the respondents, but they refused to pay the cost of the same. Hence he filed the suit for Rs.21,700/- with interest and costs.

2. Defendants filed a written statement. Defendants admitted the agreement, but contended that the plaintiff violated the terms of the contract and hence he is not entitled to get any amount as claimed. Plaintiff filed a replication.

3. Court below found that the defendants had admitted that the plaintiff dumped two lorry loads of 6 mm blue granite metals and four lorry loads of 12 mm blue granite metals. But

according to the defendants it was not as per the terms of the contract. Trial court further found that the plaintiff is not entitled to get any relief in the suit. Trial court had given cogent reasons for coming to the conclusion that the plaintiff did not start the work. Court below relied on Exhibits B1 to B6 notices to arrive at such a conclusion. Court below further found that though the defendants gave sufficient time to the plaintiff, he failed to execute the work and hence he is not entitled to any compensation and dismissed the suit. However, court below made it clear that the plaintiff is at liberty to remove the materials supplied by him if the defendants have no claim against the plaintiff. Challenging the decree and judgment passed by the court below, plaintiff has filed this appeal.

4. I have carefully gone through the findings rendered by the court below. In view of Exhibits B1 to B6, it is not possible to accept the contention of the appellant that he had performed his part of the contract. So there is no scope for interference with the impugned decree and judgment.

5. Learned counsel appearing for the appellant argued

that though the court below made it clear that the appellant is at liberty to remove the materials supplied by him, so far the respondents have not allowed him to remove the same. It is also argued that the materials supplied by the appellant are kept in a protected area and without a pass issued by the competent authority, he will not be in a position to enter the premises and remove those articles.

6. D.W.1 is the Deputy Chief Engineer of the Electricity Board. He had admitted that items 1 and 2 articles were brought and stocked by the appellant for tarring the road and those articles were not taken over by the respondent Board and the appellant is free to take back those articles at any point of time. He deposed as follows:

7. In view of the admission made by the Deputy Chief Engineer, it is only just and proper that the respondents issue

necessary pass enabling the appellant to remove items 1 and 2 unloaded in the premises of the Substation, within a period of two months from the date of receipt of a copy of this judgment.

So without prejudice to the right of the appellant aforesaid, this appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 421 OF 2002

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J U D G M E N T

20TH NOVEMBER, 2007